



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

March 15, 1974

The Honorable Patrick A. Nitsch
Eagle Pass City Attorney
P. O. Box C
Eagle Pass, Texas 78852

Open Records Decision No. 26

Dear Mr. Nitsch:

You have requested our decision as to whether the Open Records Act, Art. 6252-17a, V. T. C. S., requires the City of Eagle Pass to make available to the public a draft of a lease agreement that has been proposed by a group of private investors. In 1973 the city began efforts to lease a certain tract of land within its borders to commercial developers. Negotiations with one group of potential lessees were conducted and culminated in the submission to the city of the lease proposal in question. Many of the material terms of this proposal have been published in the local newspaper. Although at a meeting on Jan. 22, 1974, the city council tentatively approved a recommendation that it accept this proposal, other proposals have been submitted, and the city has announced that it will continue to accept bids until March 14, 1974.

In the meantime on Jan. 23, 1974, the city received a formal request, pursuant to § 7(a) of the Open Records Act, that it make the latest draft of the proposed agreement available to the Eagle Pass News-Guide. The city advised the Guide that, because the requested instrument contained "information which, if released, would give advantage to competitors or bidders," it was not public information and would be withheld. The city took no further action on the request, but on Feb. 4 the Guide brought its request, and the lack of action thereon, to the attention of this office. It was not until Feb. 14, in response to a letter from this office, that the city finally submitted the matter for a decision. In its request for a determination the city maintained its contention that the Open Records Act does not require it to make the proposed lease public because of the § 3(a)(4) exception to the Act's disclosure requirements for "information which, if released, would give advantage to competitors or bidders."

The purpose of the Open Records Act is to make available to the public full and complete information regarding the affairs of government. Subject to sixteen exceptions the Act makes all information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business public information and available to the public. Section 7(a) of the Act provides:

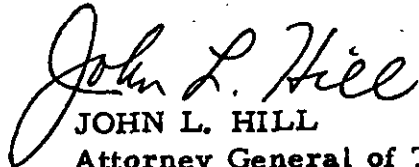
"If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information." (emphasis added)

As a result of the city's failure to comply with the procedure established in § 7(a), we are directed to presume that the information in question is public information. Ordinarily, this presumption will not be overcome unless there is a compelling demonstration that the information requested should not be released to the public, as might be the case, for instance, if it is information deemed confidential by some other source of law. Considering all the circumstances surrounding this case and having carefully reviewed all the materials submitted in regard to it, we do not find any compelling considerations that would override the presumption which results from a failure to comply with § 7(a), especially in view of the fact that many of the material terms of the proposed lease have been published in the local newspaper. Therefore, there being no indication that the disclosure of the requested information is prohibited by law, it is our opinion that because of the city's failure to comply with the procedure set out in § 7(a), the lease agreement in question is presumed to be public information under the Open Records Act and should be released to the party requesting it. We emphasize that we make no specific determination

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as to whether, in the absence of a failure to comply with the § 7(a) procedure, the lease proposal would have fallen within the § 3(a)(4) exception to the Open Records Act's disclosure requirements.

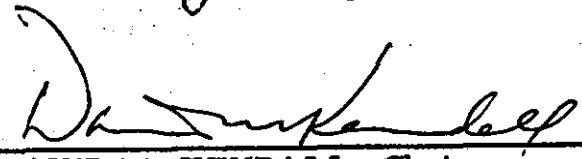
Very truly yours,


JOHN L. HILL

Attorney General of Texas

APPROVED:


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